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2D SESSION

S. 2998

To require accurate and reasonable disclosure of the terms and conditions of prepaid telephone calling cards and services, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 8, 2008

Mr. NELSON of Florida (for himself, Ms. SNOWE, Mr. KERRY, and Mr. MARTINEZ) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To require accurate and reasonable disclosure of the terms and conditions of prepaid telephone calling cards and services, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Prepaid Calling Card
5 Consumer Protection Act of 2008”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) COMMISSION.—The term “Commission”
9 means the Federal Trade Commission.

1 (2) FEES.—

2 (A) IN GENERAL.—The term “fees” means
3 all charges, fees, taxes, or surcharges, including
4 connection, hang-up, service, payphone, and
5 maintenance charges, which may be applicable
6 to the use of a prepaid telephone calling card
7 or a prepaid telephone calling service used by a
8 consumer for calls originating within the United
9 States.

10 (B) EXCLUSION.—The term “fees” does
11 not include the applicable per unit or per
12 minute rate for the particular destination called
13 by a consumer.

14 (3) INTERNATIONAL PREFERRED DESTINA-
15 TION.—The term “international preferred destina-
16 tion” means a specific international destination
17 named on a prepaid telephone calling card or on the
18 packaging material accompanying a prepaid tele-
19 phone calling card.

20 (4) PREPAID TELEPHONE CALLING CARD.—

21 (A) IN GENERAL.—The terms “prepaid
22 telephone calling card” and “card” mean any
23 right of use purchased in advance for a sum
24 certain linked to an access number and author-
25 ization code that enables a consumer to use a

1 prepaid telephone calling service. Such rights of
2 use may be embodied on a card or other phys-
3 ical object or may be purchased by an electronic
4 or telephonic means through which the pur-
5 chaser obtains access numbers and authoriza-
6 tion codes that are not physically located on a
7 card or other physical object.

8 (B) EXCLUSION.—The terms “prepaid
9 telephone calling card” and “card” do not in-
10 clude cards or other rights of use that provide
11 access to—

12 (i) a telecommunications service with
13 respect to which the card or other rights of
14 use and the telecommunications service are
15 provided for free or at no additional charge
16 as a promotional item accompanying a
17 product or service purchased by a con-
18 sumer; or

19 (ii) a wireless telecommunications
20 service account with a wireless service pro-
21 vider that the purchaser has a preexisting
22 relationship with or establishes a carrier-
23 customer relationship with via the pur-
24 chase of a prepaid wireless telecommuni-
25 cations service handset package.

1 (5) PREPAID TELEPHONE CALLING CARD DIS-
2 TRIBUTOR.—

3 (A) IN GENERAL.—The term “prepaid
4 telephone calling card distributor” means any
5 entity, corporation, company, association, firm,
6 partnership, or person that purchases prepaid
7 telephone calling cards or services from a pre-
8 paid telephone calling card distributor or pre-
9 paid telephone calling service provider and sells,
10 resells, issues, or distributes prepaid telephone
11 calling cards for a fee to 1 or more distributors
12 of such cards or to 1 or more retail sellers of
13 such cards.

14 (B) EXCLUSION.—The term “prepaid tele-
15 phone calling card distributor” does not include
16 any retail merchants or sellers of prepaid tele-
17 phone calling cards exclusively engaged in
18 point-of-sale transactions with end-user cus-
19 tomers.

20 (6) PREPAID TELEPHONE CALLING SERVICE.—

21 (A) IN GENERAL.—The terms “prepaid
22 telephone calling service” and “service” mean
23 any telecommunications service, paid for in ad-
24 vance by a consumer, that allows a consumer to
25 originate voice telephone calls through a local,

1 long distance, or toll-free access number and
2 authorization code, whether manually or elec-
3 tronically dialed.

4 (B) EXCLUSION.—The terms “prepaid
5 telephone calling service” and “service” do not
6 include any service that provides access to a
7 wireless telecommunications service account
8 wherein the purchaser has a preexisting rela-
9 tionship with the wireless service provider or es-
10 tablishes a carrier-customer relationship via the
11 purchase of a prepaid wireless telecommuni-
12 cations service handset package.

13 (7) PREPAID TELEPHONE CALLING SERVICE
14 PROVIDER.—The term “prepaid telephone calling
15 service provider” means any entity, corporation,
16 company, association, firm, partnership, or person
17 providing prepaid telephone calling service to the
18 public using its own, or a resold, telecommunications
19 network or voice over Internet technology.

20 (8) WIRELESS TELECOMMUNICATIONS SERV-
21 ICE.—The term “wireless telecommunications serv-
22 ice” has the meaning given the term “commercial
23 mobile service” in section 332(d) of the Communica-
24 tions Act of 1934 (47 U.S.C. 332(d)).

1 **SEC. 3. REQUIRED DISCLOSURES OF PREPAID TELEPHONE**
2 **CALLING CARDS OR SERVICES.**

3 (a) RULEMAKING.—Not later than 180 days after the
4 date of the enactment of this Act, the Commission shall
5 prescribe regulations that require every prepaid telephone
6 calling service provider and prepaid telephone calling card
7 distributor to disclose, with respect to the terms and con-
8 ditions of a prepaid telephone calling card or service pro-
9 vided, sold, resold, issued, or distributed by such service
10 provider or distributor, as the case may be, the following:

11 (1)(A) The number of calling units or minutes
12 of domestic interstate calls provided by such card or
13 service at the time of purchase; or

14 (B) the dollar value of such card or service and
15 the domestic interstate rate per minute provided by
16 such card or service at the time of purchase.

17 (2) The applicable calling unit or per minute
18 rates for all international preferred destinations
19 served by such card or service.

20 (3) The applicable per minute rates for all indi-
21 vidual international destinations served by such card
22 or service.

23 (4) That the rates described in paragraph (3)
24 may be obtained through the prepaid telephone call-
25 ing card provider's toll-free customer service number
26 or Internet website.

1 (5) All terms and conditions pertaining to the
2 use of such card or service, including the following:

3 (A) The maximum amount and frequency
4 of all fees.

5 (B) Applicable policies relating to refund,
6 recharge, decrement, and expiration.

7 (C) Limitations, if any, on the use or pe-
8 riod of time for which the displayed, promoted,
9 or advertised minutes or rates will be available
10 to the customer.

11 (6) The name and address of such service pro-
12 vider.

13 (7) A toll-free telephone number to contact the
14 customer service department of such service provider
15 and the hours of service of such customer service de-
16 partment.

17 (b) CLEAR AND CONSPICUOUS DISCLOSURE OF RE-
18 QUIRED INFORMATION AND LANGUAGE REQUIRE-
19 MENTS.—The regulations prescribed under subsection (a)
20 shall include requirements as follows:

21 (1) CARDS.—In the case of a prepaid telephone
22 calling card, the disclosures described in subsection
23 (a) (other than paragraph (3) of such subsection)
24 shall be printed in plain English in a clear and con-
25 spicuous location on each prepaid telephone calling

1 card or the packaging of such card so that such dis-
2 closures are plainly visible to a consumer at the
3 point of sale.

4 (2) ONLINE SERVICES.—In the case of a pre-
5 paid telephone calling service that consumers access
6 and purchase via the Internet, the disclosures de-
7 scribed in subsection (a) (other than paragraph (4)
8 of such subsection) shall be displayed in plain
9 English in a clear and conspicuous location on the
10 Internet site from which the consumer purchases
11 such service.

12 (3) ADVERTISING AND OTHER PROMOTIONAL
13 MATERIAL.—The disclosures described in subsection
14 (a) (other than paragraph (3) of such subsection)
15 shall be printed on any advertising for the prepaid
16 telephone calling card or service, including on any
17 signs for display by retail merchants, any pro-
18 motional emails, any Internet site used to promote
19 such card or service, and on any other promotional
20 material.

21 (4) LANGUAGES OTHER THAN ENGLISH.—If a
22 language other than English is predominantly used
23 on a prepaid telephone calling card or its packaging,
24 or in the point-of-sale advertising, Internet adver-
25 tising, or promotional material of a prepaid tele-

1 phone calling card or prepaid telephone calling serv-
2 ice, than the disclosures required by the regulations
3 prescribed under subsection (a) shall be disclosed in
4 that language on such card, packaging, advertise-
5 ment, or promotional material in the same manner
6 as if English were used.

7 (c) **ADDITIONAL REGULATIONS.**—The Commission
8 may, in accordance with section 553 of title 5, United
9 States Code, prescribe such other regulations as the Com-
10 mission determines are necessary to protect consumers of
11 prepaid telephone calling cards and services.

12 **SEC. 4. UNLAWFUL CONDUCT RELATED TO PREPAID TELE-**
13 **PHONE CALLING CARDS.**

14 (a) **PREPAID TELEPHONE CALLING SERVICE PRO-**
15 **VIDER.**—It shall be unlawful for any prepaid telephone
16 calling service provider to do any of the following:

17 (1) **UNDISCLOSED FEES AND CHARGES.**—To
18 assess or deduct from the balance of a prepaid tele-
19 phone calling card any fee or other amount for use
20 of the prepaid telephone calling service, except—

21 (A) the per minute rate or value for each
22 particular destination called by the consumer;
23 and

24 (B) fees that are disclosed as required by
25 regulations prescribed under section 3.

1 (2) MINUTES AND RATES AS PROMOTED AND
2 ADVERTISED.—With respect to a prepaid telephone
3 calling card for a service of the prepaid telephone
4 calling service provider, to provide fewer minutes
5 than the number of minutes promoted or advertised,
6 or to charge a higher per minute rate to a specific
7 destination than the per minute rate to that specific
8 destination promoted or advertised, on—

9 (A) the prepaid telephone calling card;

10 (B) any point-of-sale material relating to
11 the card; or

12 (C) other advertising related to the card or
13 service.

14 (3) MINUTES ANNOUNCED, PROMOTED, AND
15 ADVERTISED THROUGH VOICE PROMPTS.—To pro-
16 vide fewer minutes than the number of minutes an-
17 nounced, promoted, or advertised through any voice
18 prompt given by the prepaid telephone calling service
19 provider to a consumer at the time the consumer
20 places a call to a dialed destination with a prepaid
21 telephone calling card or service.

22 (4) EXPIRATION.—Unless a different expiration
23 date is clearly disclosed pursuant to the disclosure
24 requirements of regulations prescribed under section

1 3, to provide, sell, resell, issue, or distribute a pre-
2 paid telephone calling card or service that expires—

3 (A) before the date that is 1 year after the
4 date on which such card or service is first used;
5 or

6 (B) in the case of a prepaid telephone call-
7 ing card or service that permits a consumer to
8 purchase additional usage minutes or add addi-
9 tional value to the card or service, before the
10 date that is 1 year after the date on which the
11 consumer last purchased additional usage min-
12 utes or added additional value to the card or
13 service.

14 (5) CHARGES FOR UNCONNECTED CALLS.—To
15 assess any fee or charge for any unconnected tele-
16 phone call. For purposes of this paragraph, a tele-
17 phone call shall not be considered connected if the
18 person placing the call receives a busy signal or if
19 the call is unanswered.

20 (b) PREPAID TELEPHONE CALLING CARD DIS-
21 TRIBUTOR.—It shall be unlawful for any prepaid telephone
22 calling card distributor to do any of the following:

23 (1) UNDISCLOSED FEES AND CHARGES.—To
24 assess or deduct from the balance of a prepaid tele-

1 phone calling card any fee or other amount for use
2 of the prepaid telephone calling service, except—

3 (A) the per minute rate or value for each
4 particular destination called by the consumer;
5 and

6 (B) fees that are disclosed as required by
7 regulations prescribed under section 3.

8 (2) MINUTES AS PROMOTED AND ADVER-
9 TISED.—To sell, resell, issue, or distribute any pre-
10 paid telephone calling card that the distributor
11 knows provides fewer minutes than the number of
12 minutes promoted or advertised, or a higher per
13 minute rate to a specific destination than the per
14 minute rate to that specific destination promoted or
15 advertised, on—

16 (A) the prepaid telephone calling card;

17 (B) any point of sale material relating to
18 the card; or

19 (C) other advertising relating to the card
20 or service.

21 (3) MINUTES ANNOUNCED, PROMOTED, OR AD-
22 VERTISED THROUGH VOICE PROMPTS.—To sell, re-
23 sell, issue, or distribute a prepaid telephone calling
24 card that such distributor knows provides fewer min-
25 utes than the number of minutes announced, pro-

1 moted, or advertised through any voice prompt given
2 to a consumer at the time the consumer places a call
3 to a dialed destination with the prepaid telephone
4 calling card or service.

5 (4) EXPIRATION.—Unless a different expiration
6 date is clearly disclosed pursuant to the disclosure
7 requirements of regulations prescribed under section
8 3, to provide, sell, resell, issue, or distribute a pre-
9 paid telephone calling card that expires—

10 (A) before the date that is 1 year after the
11 date on which such card or service is first used;
12 or

13 (B) in the case of a prepaid telephone call-
14 ing card or service that permits a consumer to
15 purchase additional usage minutes or add addi-
16 tional value to the card or service, before the
17 date that is 1 year after the date on which the
18 consumer last purchased additional usage min-
19 utes or added additional value to the card or
20 service.

21 (c) LIABILITY.—A prepaid telephone calling service
22 provider or a prepaid telephone calling card distributor
23 may not avoid liability under this section by stating that
24 the displayed, announced, promoted, or advertised min-
25 utes, or the per minute rate to a specific destination, are

1 subject to fees or charges, or by utilizing other disclaimers
2 or limitations.

3 **SEC. 5. ENFORCEMENT BY THE FEDERAL TRADE COMMIS-**
4 **SION.**

5 (a) UNFAIR AND DECEPTIVE ACT OR PRACTICE.—
6 Notwithstanding any other provision of law, a violation of
7 a regulation prescribed under section 3 or the commission
8 of an unlawful act proscribed under section 4 shall be
9 treated as a violation of a rule defining an unfair or decep-
10 tive act or practice prescribed under section 18(a)(1)(B)
11 of the Federal Trade Commission Act (15 U.S.C.
12 57a(a)(1)(B)).

13 (b) AUTHORITY OF THE COMMISSION.—The Commis-
14 sion shall enforce this Act in the same manner and by
15 the same means as though all applicable terms and provi-
16 sions of the Federal Trade Commission Act were incor-
17 porated into and made a part of this Act.

18 (c) RULEMAKING AUTHORITY.—The Commission
19 may prescribe regulations to carry out this Act.

20 **SEC. 6. STATE ENFORCEMENT.**

21 (a) IN GENERAL.—

22 (1) CIVIL ACTIONS.—In any case in which the
23 attorney general of a State, a State utility commis-
24 sion, or other authorized State consumer protection
25 agency has reason to believe that an interest of the

1 residents of that State has been or is threatened or
2 adversely affected by the engagement of any person
3 in a practice that is prohibited under this Act, the
4 State, as *parens patriae*, may bring a civil action on
5 behalf of the residents of that State in a district
6 court of the United States of appropriate jurisdic-
7 tion, or any other court of competent jurisdiction—

8 (A) to enjoin that practice;

9 (B) to enforce compliance with this Act;

10 (C) to obtain damage, restitution, or other
11 compensation on behalf of residents of the
12 State; or

13 (D) to obtain such other relief as the court
14 may consider to be appropriate.

15 (2) NOTICE TO FEDERAL TRADE COMMIS-
16 SION.—

17 (A) IN GENERAL.—Before filing an action
18 under paragraph (1), the attorney general of a
19 State, a State utility commission, or an author-
20 ized State consumer protection agency shall
21 provide to the Commission—

22 (i) written notice of the action; and

23 (ii) a copy of the complaint for the ac-
24 tion.

25 (B) EXEMPTION.—

1 (i) IN GENERAL.—Subparagraph (A)
2 shall not apply to the filing of an action
3 under paragraph (1) if the attorney gen-
4 eral of a State, a State utility commission,
5 or an authorized State consumer protection
6 agency filing such action determines that it
7 is not feasible to provide the notice de-
8 scribed in subparagraph (A) before the fil-
9 ing of the action.

10 (ii) NOTIFICATION.—In an action de-
11 scribed in clause (i), the attorney general
12 of a State, a State utility commission, or
13 an authorized State consumer protection
14 agency shall provide notice and a copy of
15 the complaint to the Commission at the
16 time the action is filed.

17 (b) INTERVENTION BY FEDERAL TRADE COMMIS-
18 SION.—

19 (1) IN GENERAL.—Upon receiving notice under
20 subsection (a)(2), the Commission may intervene in
21 the action that is the subject of such notice.

22 (2) EFFECT OF INTERVENTION.—If the Com-
23 mission intervenes in an action under subsection (a),
24 the Commission may—

1 (A) be heard with respect to any matter
2 that arises in that action; and

3 (B) file a petition for appeal.

4 (c) CONSTRUCTION.—Nothing in this Act may be
5 construed to prevent an attorney general of a State, a
6 State utility commission, or an authorized State consumer
7 protection agency from exercising the powers conferred on
8 the attorney general, a State utility commission, or an au-
9 thorized State consumer protection agency by the laws of
10 that State—

11 (1) to conduct investigations;

12 (2) to administer oaths or affirmations;

13 (3) to compel the attendance of witnesses or the
14 production of documentary and other evidence;

15 (4) to enforce any State consumer protection
16 laws of general applicability; or

17 (5) to establish or utilize existing administrative
18 procedures to enforce the provisions of the law of
19 such State.

20 (d) VENUE; SERVICE OF PROCESS.—

21 (1) VENUE.—Any action brought under sub-
22 section (a) may be brought in the district court of
23 the United States that meets applicable require-
24 ments relating to venue under section 1391 of title
25 28, United States Code.

1 (2) SERVICE OF PROCESS.—In an action
2 brought under subsection (a), process may be served
3 in any district in which the defendant—

4 (A) is an inhabitant; or

5 (B) may be found.

6 **SEC. 7. APPLICATION.**

7 The regulations prescribed under section 3 and the
8 provisions of section 4 shall apply to any prepaid telephone
9 calling card issued or placed into the stream of commerce,
10 and to any advertisement, promotion, point-of-sale mate-
11 rial or voice prompt regarding a prepaid telephone calling
12 service that is created or disseminated 90 days after the
13 date on which the regulations are prescribed under section
14 3(a).

15 **SEC. 8. PREEMPTION.**

16 Nothing in this Act shall affect the authority of any
17 State to establish or continue in effect a provision of the
18 law of a State relating to regulation of prepaid calling
19 cards, prepaid calling card distributors, prepaid calling
20 services, or prepaid calling service providers, except to the
21 extent that such provision of law is inconsistent with the
22 provisions of this Act or a regulation prescribed under this
23 Act, and then only to the extent of such inconsistency.
24 A provision of the law of a State is not inconsistent with
25 this Act or a regulation prescribed under this Act if such

1 provision provides equal or greater protection to con-
2 sumers than what is provided under this Act or the regula-
3 tions prescribed under this Act.

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